IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.Nos.242 & 243 of 2003
and
Crl.M.P.No.1744 & 1745 of 2003

K.Deenadayalan ..Revision petitioner in both Crl.R.Cs.

vs.

A.K.Sumathi .. Respondent in both Crl.R.Cs.

Prayer: These Revisions have been preferred against the judgments dated 11.02.2003, in C.A.No.119 & 120 of 2002 respectively, passed by the VI Additional Judge, City Civil Court, Chennai, confirming the judgments in C.C.No.4270 & 3061 of 1997, on the file of the VII Metropolitan Magistrate, Chennai, dated 16.04.2002.

For Petitioner : Mr.N.Kumaraswami (in both Crl.R.Cs.)
For Respondent : Mr.L.Kanimozhi (in both Crl.R.Cs.)

COMMON ORDER

These revisions have been preferred against the judgments in C.A.No.119 & 120 of 2002 on the file of the VI Additional Judge, City Civil Court, Chennai. The accused in C.C.No.4270 & 3061 of 1997 on the file of the VII Metropolitan Magistrate, Chennai, was tried for an offence under Section 138 of the Negotiable Instruments Act on the basis of the private complaint preferred by the complainant under Section 200 of Cr.P.C.

2. The learned trial judge had found the accused guilty under section 138 of the Negotiable Instruments Act and convicted and sentenced to undergo two months RI and a fine of Rs.5000/- with default sentence in C.C.No.4270/1997 and has also convicted and sentenced the accused under Section 138 of the Negotiable Instruments Act to undergo two months RI and a fine of Rs.5000/- with default sentence in C.C.No.3061 of 1997. The learned trial judge has further directed under Section 357(1) of Cr.P.C., that out of the fine amount a sum of Rs.4000/- each was ordered to be paid to the complainant as compensation. Aggrieved by the findings of the learned trial judge, the accused had preferred appeals in C.A.No.119 of 2002 against the judgment in C.C.No.4270

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of 1997 and C.A.120 of 2002 against the judgment in C.C.No.3061 of 1997 before the VI Additional Judge, City Civil Court, Chennai, who after careful scrutiny of the evidence of both oral and documentary and after due deliberation on the submissions made by both the counsels, had confirmed the findings of the learned trial judge in both the cases, which necessitated the accused to prefer these revisions.

3. 3(a) The brief facts in the complaint preferred in C.C.No.4270 of 1997 is that in order to discharge the debt incurred by him to the complainant, the accused had drawn three cheques each for a sum of Rs.25,000/- dated 25.3.1997, 25.4.1997 and 25.5.1997 in favour of the complainant and when those cheques were presented for collection in the Central Bank of India, George Town branch, Chennai, they were returned with an endorsement 'insufficient funds'. A notice was issued by the complainant on 6.6.1997 as required under Section 138 (b) of the Negotiable Instruments Act which was acknowledged by the accused on 9.6.1997. The accused has failed to make any payment.

3(b) On the side of the complainant P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.13 were marked.

3(c) P.W.1 is the complainant who would narrate what he has stated in the compliant.

3(d) P.W.2 is the bank official of Central Co-operative bank, Porur branch, wherein the complainant is having his account. He would depose that cheques Ex.P.1 to Ex.P.3 were presented in his bank for collection but on the date of presentation of those cheques there was only a sum of Rs.1001/- in the credit of the account of the accused.

3(c) P.W.3 would depose that the accused had issued a cheque for Rs.60,000/- in the name of the complainant and requested to discharge the debt due to P.W.3 & P.W.4, and the complainant had given Rs.40,000/- to P.W.3.

3(d) P.W.4 has deposed that he had entered into an agreement for the purchase of 25 cents land and has paid a sum of Rs.10,000/- as advance. The accused promised to pay a sum of Rs.10,000/- together with compensation amount of Rs.10,000/-.

3(e) On the above evidence when incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused had denied his complicity with the crime. The accused has examined three witnesses on his side.

3(f) After going through the oral and documentary evidence

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the learned trial judge held that the complainant has proved the guilt of the accused for an offence under Section 138 of the Negotiable Instruments Act and accordingly convicted and sentenced the accused as indicated above and the appeal preferred by the accused before the first appellate Court also ended against him. Hence, the accused has preferred Crl.R.C.No.242 of 2003 before this Court.

4. 4(a) In C.C.No.3061 of 1997, according to the complainant, in order to discharge a subsisting liability the accused had drawn a cheque for Rs.25,000/- on 25.2.1997 and when the cheque was presented for collection in Central Bank of India, George Town branch, Chennai, the same was returned with an endorsement 'insufficient funds'. A statutory notice was issued by the complainant dated 11.3.1997, which was received by the accused. The accused had sent a reply on 19.4.1997 with frivolous contentions.

4(b) Before the trial Court P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.14 were marked.

4(c) P.W.1 would depose that the accused had borrowed a sum of Rs.2,50,000/- for his business purpose under a promissory note executed in favour of the complainant and that the accused had repaid in several instalments a sum of Rs.50,000/- only and he had drawn a cheque Ex.P.3 which when presented for collection on 25.2.1997 in the bank, was returned with an endorsement 'insufficient funds'. Subsequently the accused had drawn nine cheques each for Rs.25,000/- and also entered into an agreement on 31.09.1995 under which a sum of Rs.1,00,000/- was given to the accused and on the same date another sum of Rs.25,000/- was also given to the accused for the purchase of land and that the accused is liable for Rs.4,60,000/- out of which a sum of Rs.60,000/- was paid by the accused, which is to be distributed to P.W.3 & P.W.4 and as per the request made by the accused P.W.1 has also returned Rs.60,000/- to P.W.3 & P.W.4 and the admitted subsisting liability as per Ex.P.14 by the accused to the complainant is Rs.4,00,000/-.

4(d) P.W.2 a bank official would state that Ex.P.3 cheque was received by Bank for collection and on that date a sum of Rs.100/- was in the credit of the accused's account.

4(e) P.W.3 would depose that he had entered into an agreement with the accused for the purchase of land and paid a sum of Rs.25,000/- as advance and the accused had not acted in accordance with the terms of the agreement and hence P.W.3 demanded for the repayment of the money which he had already advanced. The accused had written a letter dated 10.8.1995 in which he has admitted that P.W.3 has suffered a lot because of the

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accused and promised to repay a sum of Rs.40,000/-. The accused issued a cheque for Rs.60,000/- in the name of the complainant and requested to discharge the debt due to P.W.3 & P.W.4, as such the complainant has paid a sum of Rs.40,000/- to P.W.3.

4(f) P.W.4 would depose that he has entered into an agreement for the purchase of 25 cents of land and has paid a sum of Rs.10,000/- as advance. The accused promised to pay a sum of Rs.10,000/- together with compensation amount of Rs.10,000/-. Since P.W.4 is residing at Andra Pradesh, he has requested the accused to pay the said sum to the complainant. He would admit that he has received a sum of Rs.25,000/- from the complainant.

4(g) When the incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied each and every incriminating circumstance. On the side of the accused D.W.1 to D.W.3 were examined. After going through the oral and documentary evidence, the learned trial judge has held that the guilt against the accused under Section 138 of the Negotiable Instruments Act has been proved beyond any reasonable doubt and accordingly the learned trial judge has convicted and sentenced the accused as indicated above. The appeal preferred by the accused against the findings of the trial Court in C.A.No.120 of 2002 also ended in failure, which necessitated the accused to approach this court by way of this Crl.R.C.No.243 of 2003.

5. Now the point for determination in these revisions is whether the findings of the first appellant Court in C.A.Nos.119 & 120 of 2002 are liable to be set aside for the reasons stated in the memorandum of revision?

6. The Point:- when both the revisions were taken up for hearing and when the ratio decidendi in 2004(2) SCC 235 (Goa Plast (P) Ltd., Vs. Chico Ursula D'souza), was pointed out, the learned counsel Mr.N.Kumaraswami appearing for the revision petitioner would fairly concede that he will be satisfied with the modification of sentence in terms of the above said ratio decidendi. The dictum of the Honourable Apex Court in the above said ratio decidendi relevant for the purpose of these revisions are as follows:-

> "It has to be presumed that a cheque is issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. This presumption coupled with the object of Chapter XVII of the Act which is to promote the efficacy of banking operation and to ensure credibility in business transactions through banks

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persuades us to take a view that by countermanding payment of post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong. If we hold otherwise, by giving instructions to banks to stop payment of a cheque after issuing the same against a debt or liability, a drawer will easily avoid penal consequences under Section 138. Once a cheque is issued by a drawer, a presumption under Section 139 must follow and merely because the drawer issued notice to the drawee or to the bank for stoppage of payment it will not preclude an action under Section 138 of the Act by the drawee or the holder of the cheque in due course. This was the view taken by this Court in *Modi Cements Ltd. Vs. Kunchil Kumar Nandi (1998) 3 SCC 249.* On same facts is the decision of this Court in *Ashok Yeshwant Badave Vs. Surendra Madhavrao Nighojakar (2001)3 SCC 726.* The decision in *Modi case* overruled an earlier decision of this Court in *Electronics Trade & Technology Development Corpn. Ltd Vs. Indian Technologists & Enginoors (Electronics) (P) Ltd. (1996) 2 SCC 739 : 1996 SCC (Cri) 454,* which had taken a contrary view. We are in respectful agreement with the view taken in *Modi case.* The said view is in consonance with the object of the legislation. On the faith of payment by way of a post-dated cheque, the payee alters his position by accepting the cheque. If stoppage of payment before the due date of the cheque is allowed to take the transaction out of the purview of Section 138 of the Act, it will shake the confidence which a cheque is otherwise intended to inspire regarding payment being available on the due date.

.....

..... We have no doubt that the respondent has committed an offence punishable under the provisions of Section 138 of the Act and is liable to be punished. The transaction in question took place between the parties in the year 1993, therefore, Section 138, as it stood at the relevant time, would be applicable to the present case. Section 138 provides imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both. Section

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138 has now been amended and the penalty of imprisonment for a term which may extend to one year has been substituted by two years as provided by the amending Act of 2002 and the fine which may extend to twice the amount of the cheque. This has been prescribed as the punishment for the offence under Section 138 of the Act.

The object and the ingredients under the provisions, in particular, Section 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforsaid provisions. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

After observing as above the Honourable Apex Court held that instead of sentencing the accused to imprisonment, awarded compensation twice the amount of the cheque to the complainant. So following the same yard strick, I am of the view that instead of imposing punishment by way of imprisonment and fine the accused may be ordered to pay compensation twice the amount of cheque. Point is answered accordingly.

7. In the result, the Crl.R.C.No.242 & 243 of 2003 are dismissed confirming the judgment in C.A.No.119 & 120 of 2002 on the file of the VI Additional Judge, City Civil Court, Chennai, in respect of the conviction. The accused in C.C.No.4270 of 1997 on the file of the VII Metropolitan Magistrate, George Town, Chennai, is convicted under Section 138 of the Negotiable Instruments Act and sentenced to pay a compensation of Rs.1,50,000/- (twice the amount of the cheque) to the complainant, instead of two months RI and a fine of Rs.5,000/-. The time for payment is three months. Fine amount, if any paid by the accused, is to be adjusted with the above said compensation. The accused

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in C.C.No.3061 of 1997 on the file of the VII Metropolitan Magistrate, George Town, Chennai, is convicted under Section 138 of the Negotiable Instruments Act and sentenced to pay a compensation of Rs.50,000/- (twice the amount of the cheque) to the complainant, instead of two months RI and a fine of Rs.5,000/-. The time for payment is three months. Fine amount, if any paid by the accused, is to be adjusted with the above said compensation.

Connected Crl.M.P.Nos.1744 & 1745 of 2003 are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

ssv

To

1.The VII Metropolitan Magistrate,
George Town, Madras.

2.The VI Additional Judge,
City Civil Court, Chennai.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

4.The Superintendent of Central Prison, Chennai.

MA (CO)
km/20.4.

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